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COMMISSION ON HUMAN RIGHTS

Fifty-eighth session

SUMMARY RECORD OF THE 36th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 April 2002, at 3 p.m.

Chairperson: Mr. JAKUBOWSKI (Poland)

later: Mr. SALLOUM (Syrian Arab Republic)
(Vice-Chairperson)

later: Mr. JAKUBOWSKI (Poland)
(Chairperson)

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(b) MINORITIES

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The meeting was called to order at 3.05 p.m.

SPECIFIC GROUPS AND INDIVIDUALS:

(a) MIGRANT WORKERS

(b) MINORITIES

(c) MASS EXODUSES AND DISPLACED PERSONS

(d) OTHER VULNERABLE GROUPS AND INDIVIDUALS (agenda item 14) (E/CN.4/2002/93 and Add.1, 94 and Add.1, 95 and Add.1-3)

1. Ms. RODRÍGUEZ PIZARRO (Special Rapporteur on the human rights of migrants) introduced her annual report on the human rights of migrants (E/CN.4/2002/94). The report stressed the progress made in that area at the international level during the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held at Durban in August and September 2001. Forty-five paragraphs of the Declaration and Programme of Action of the Conference were specifically devoted to the situation of migrants and the protection of their rights and, at the time of submission of her report, 17 countries had ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Nineteen States were currently parties to the Convention and only one more ratification was required for its entry into force.

2. She had often stressed that the migration of men and women in search of better living conditions for themselves and their families had benefits for the people of both the countries of origin and host societies. However, those benefits could not be measured solely in terms of economic progress and growth in productivity; the positive effects of multiculturalism and diversity must also be taken into account.

3. She had also emphasized the importance of regularized migration, particularly where there was a real demand for migration, and of combating human smuggling. She called on States to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime.

4. With the help of the international community, countries of origin must generate conditions that allowed their nationals to remain in the country. On the other hand, in the face of migratory pressure, they should make efforts to prevent their nationals from leaving home without protection and fron. placing their lives in the hands of transnational trafficking networks. The situation of women and unaccompanied minors remained a source of great concern in that regard. Transit and destination countries must therefore fulfil their international obligations to protect the rights of migrants, including access to education and health care and family reunification. Common, realistic and equitable solutions should be sought at the bilateral and regional levels in order to resolve the problem of irregular migration and human smuggling and, where appropriate, to allow migrants to return to their countries of origin in dignity. Solutions should be sought jointly by concerned institutions, non-governmental organizations (NGOs) and international organizations.

5. Introducing her report on her official mission to Ecuador in November 2001 (E/CN.4/2002/94/Add.1), she said that the Government of Ecuador had undertaken important commitments, in cooperation with civil society and migrant organizations, regarding a human rights approach to its migration policies. Those efforts constituted an example of good practice of a State involving NGOs in its decision-making process and in policy-making in the field of migration. She hoped that the Government of Ecuador would fulfil its commitments on the ground with the support of the international community. Lastly, she thanked the Governments of the countries who had cooperated with her by responding to her communications, the organizations that had supported her and the migrants who had shared their experiences with her.

6. Mr. VALENCIA (Ecuador) expressed appreciation for the visit to Ecuador by the Special Rapporteur, Ms. Rodríguez Pizarro. His Government attached particular importance to the situation of migrants and believed that their human rights should be protected, regardless of their migration status.

7. As the Special Rapporteur had noted, the Government of Ecuador had adopted that policy at all levels. At the international level, Ecuador had recently ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and, at the bilateral level, it had signed an agreement with Spain to regulate migratory flows to that country. Similar relations had been established with other States. At the internal level, with the involvement of civil society, Ecuador had adopted a national plan designed to take a comprehensive approach to issues affecting migrants and their families. The Special Rapporteur had welcomed those initiatives and had called on the international community to provide Ecuador with assistance in that area. He thanked the Special Rapporteur again for her visit, wished her every success in her mandate and assured her of his Government's ongoing cooperation.

8. Mr. DENG (Representative of the Secretary-General on internally displaced persons) said that his initial assignment had been to study the causes and consequences of internal displacement, the international legal and institutional frameworks that provided a basis for protection and assistance and the ways in which the international community might respond more effectively to the needs of displaced persons. At the normative level, the Guiding Principles on Internal Displacement, which had been presented to the Commission in 1998, had, generally speaking, been well received. Though not legally binding, the Principles were used by Governments in the development of their law and policy and by regional organizations, NGOs and displaced communities themselves. Dialogue with the Governments concerned was being pursued in order to find common ground that would broaden support for the Principles.

9. At the institutional level, the Emergency Relief Coordinator, who headed the Office for the Coordination of Humanitarian Affairs (OCHA), was responsible for ensuring assistance to displaced persons. An Inter-Agency Network responsible for mobilizing operational agencies on the ground and a specialized OCHA unit responsible for assessing international efforts to meet the assistance and protection needs of internally displaced persons and for making recommendations in that area on a country-by-country basis had also been established.

10. Fruitful cooperation had been developed with various intergovernmental organizations, including the Organization of African Unity, now the African Union; the Organization of American States (OAS); the Organization for Security and Cooperation in Europe (OSCE); and the Council of Europe, and promising contacts had been made with other regional and subregional organizations.

11. He considered country missions to be a particularly important aspect of his mandate since they provided a means of assessing the extent to which the protection, assistance and development needs of the internally displaced were being met and of engaging in solution-oriented dialogue with the Governments and organizations concerned. The findings and recommendations resulting from his 21 missions to different countries were set out in his reports to the Commission, the General Assembly and the Inter-Agency Standing Committee (IASC) and in press releases. He stressed the need to create better institutional structures to protect displaced persons and to address their need for housing; some of them spent years in makeshift shelters in their own country.

12. Describing his mission to Indonesia, he said that internal displacement was a new phenomenon there and that the Government was striving to respond to it by facilitating displaced persons' return to or integration into their host communities. He had urged the Government to create appropriate conditions for those options and had called on the international community to assist the Indonesian Government in that area.

13. Speaking of his mission to the Sudan, one of the countries most affected by the crisis of internal displacement, he said that although the situation of the displaced had improved somewhat since 1992, the crisis remained serious. After discussion with the Sudanese authorities, it had been decided to hold a workshop on the issue, which would be organized at the subregional level for countries members of the Inter-Governmental Authority on Development, which the Sudan currently chaired.

14. Other missions to Turkey, Mexico and the Philippines were planned for the current year; a mission to the Russian Federation might also be arranged. He had requested a mission to the occupied Palestinian territories but was still awaiting a positive response from the Israeli authorities.

15. Lastly, he said that studies on internal displacement were being prepared with the assistance of the Project on Internal Displacement at the Brookings Institution. The two volumes already published contained a global overview of internal displacement, set out the legal and institutional frameworks for addressing it, examined the role of NGOs and regional organizations and provided recommendations and case studies on various regions of the world.

16. While much had been accomplished in the establishment of normative and institutional frameworks, it must be borne in mind that 25 million people in over 40 countries around the world were still internally displaced, in desperate need of protection and assistance and often in inaccessible regions; thus, it was important not to become complacent but to make the most effective use of the new tools currently in place. The Guiding Principles, which provided the only normative framework for internal displacement, should be supported and applied, as should institutional arrangements, whose effectiveness could not yet be judged. While country missions

had proved promising, they had involved countries whose Governments were prepared to engage in constructive dialogue with him and with other international officials. However, in some countries where the needs of the displaced were particularly acute, Governments were not receptive to international involvement.

17. Central to the debate on internal displacement had been the sensitive issue of national sovereignty. His approach had been to recognize the problem as inherently internal and therefore a matter of State sovereignty but, at the same time, to state that sovereignty entailed responsibility to ensure the protection of citizens, with help from the international community as needed. Thus far, the problem of internal displacement had been perceived as a humanitarian crisis and, to a limited extent, as a human rights issue. However, it was becoming increasingly apparent that in most cases it was a crisis of national identity linked to political, social, cultural and religious cleavages within a country which determined who received assistance and who was neglected or even persecuted. The solution to those problems would require a restructuring of powers and resources in order to foster peace and justice. Ultimately, the problem of displaced persons must be addressed by the nationals of the countries concerned, but the international community could and should play a constructive role in accordance with the universalizing norms of human dignity.

18. Mr. SIDDIG (Sudan) said that he welcomed the report of the Representative of the Secretary-General on Internally Displaced Persons on his mission to the Sudan (E/CN.4/2002/95/Add.1). However, the statement that elements within the Government had opposed the mission was incorrect. The Sudanese Government had welcomed the mission and the Representative of the Secretary-General had been able to meet with the President and many key figures. The Government had accepted the proposal to hold a national seminar on displaced persons and would take into account the Guiding Principles on Internal Displacement in developing its national strategy in that area. He assured the Representative of the Secretary-General of his support and expressed appreciation for the report's acknowledgement that progress had been made and measures taken to improve the situation of displaced persons in the Sudan.

19. Mr. van BOVEN (Member of the Board of Trustees of the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery) said that at its seventh annual session in January 2002, the Board of Trustees of the Fund had reviewed about 40 applications for project grants from NGOs for the provision of humanitarian, legal or financial aid to victims of contemporary forms of slavery and 40 new applications for travel grants to allow representatives of NGOs to attend the twenty-seventh session of the Working Group on Contemporary Forms of Slavery in May 2002. At the recommendation of the Board, the Secretary-General had approved 7 travel grants and 21 project grants for a total of about US$ 136,000. The list of approved beneficiaries and recommendations would be included in the report of the Secretary-General to the Working Group on Contemporary Forms of Slavery; information on the Fund's expenditures for 2002 would be provided in the report of the Secretary-General to the General Assembly at its fifty-seventh session. In the light of the number of requests received in 2002 and the resources available, the Fund would need US$ 300,000 to finance the grants that had been approved. He recalled the appeals for contributions made by the Sub-Commission on the Promotion and Protection of Human Rights and urged all donors to contribute to the Fund before 1 December 2002.

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:

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(f) STATES OF EMERGENCY

(g) CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

(agenda item 11) (continued) (E/CN.4/2002/5, 7, 8, 12, 63-65, 66 and Add.1, 67, 68, 69 and Add.1, 70, 71, 72 and Add.1-3, 73 and Add.1, 74 and Corr.1 and Add.1 and Corr.1 and Add.2, 75 and Add.1 and 2, 76 and Add.1, 77 and Add.1 and 2, 78, 79, 121, 122, 124, 125, 130, 134, 137, 143, 144, 152, 154, 155, 157, 162, 163 and 170; E/CN.4/2002/NGO/1, 9-11, 16, 18, 19, 25, 30, 38, 42, 49, 53, 70-79, 100, 104, 106, 120, 126, 131-141, 144, 148, 162, 164, 177, 182-187 and 193; A/56/181 and 253; A/RES/56/143; E/CN.4/Sub.2/2001/6 and Corr.1 and 31)

20. Mr. SARRAH (Libyan Arab Jamahiriya) informed the Commission of the legislative provisions governing the judiciary in Libya. The 1969 Constitution guaranteed the independence of judges, whose function was to protect rights and freedoms; granted every individual the right of recourse to the courts; and gave accused persons the means to defend themselves. Second, the Great Green Document on Human Rights guaranteed a fair trial and the Promotion of Freedom Act allowed the courts to provide the services of a lawyer free of charge. The Organization of the Judiciary Act guaranteed the independence of judges, who could not be dismissed except on grounds of health or lack of credibility. The General Assembly of Court Judges was in charge of the internal organization of the courts. The Council of the Judiciary was responsible for the appointment, promotion, transfer and retirement of members of the judiciary. The Supreme Court, which was an appeals court, monitored the legitimacy of legislation adopted and decisions taken with regard to judges, and lawyers could be prosecuted for malpractice. Members of the judiciary and lawyers had the right to form labour unions and professional associations.

21. Mr. VEGA (CHILE), speaking on behalf of his country and the Group of Latin American and Caribbean States (GRULAC), noted that the term "disappeared persons" had been used for the first time in reference to Latin America. He paid tribute to the role that France had played and continued to play in protecting the rights of the victims of such disappearances. Unfortunately, as the independent expert charged with examining the existing criminal and human rights framework for the protection of persons from enforced or involuntary disappearances had noted in his report (E/CN.4/2002/71), enforced disappearance had become a universal phenomenon which the international community must combat with greater determination.

22. In his report, the independent expert rightly acknowledged that enforced disappearance was one of the most serious human rights violations, that there were gaps in the current international legal framework and that there was a need to adopt a legally binding normative instrument for the protection of all persons from enforced disappearance. GRULAC awaited with interest for the Open-ended Working Group whose establishment the Economic and Social Council had approved in its decision 2001/221 to begin its work. It would be preferable to deal first with the substantive issues before deciding on the form that a future international instrument should take.

23. Mr. ARENALES FORNO (Guatemala) said that human rights were universal, indivisible and interdependent and that respect for civil and political rights and economic, social and cultural rights should go hand in hand. Human rights and fundamental freedoms could be fully guaranteed only in pluralist, participatory democracies. His delegation therefore regretted that the representatives of authoritarian or pseudo-democratic countries criticized Western democracies which, despite their flaws, constituted the form of government which gave their citizens the greatest opportunity to exercise and protect their rights and freedoms. The countries in question would do better to emulate those democracies, whose institutions they should adapt. The primary danger to emerging democracies in Africa, Asia and Latin America was that of merely holding transparent, fair elections without genuine representativity or democratic participation, thereby giving their people the impression that democracy did not work.

24. He welcomed the establishment of a Working Group responsible for developing a legally binding normative instrument for the protection of all persons from enforced disappearance; he also urged the Commission to adopt at its current session the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which would establish a preventive system in that area, at the national and international levels.

25. Mr. Salloum (Syrian Arab Republic), Vice-Chairperson, took the Chair.

26. Mr. Al-FAIHANI (Bahrain) condemned in the strongest terms all terrorist acts, regardless of their motivation. Terrorism was contrary to all religious teachings and basic standards of human rights and undermined global peace and security. It was therefore vital for the international community to unite in order to overcome that danger, which did not respect national borders. There was scarcely any country that had not been subject to terrorist acts, which were increasingly frequent. There was a need to strengthen international cooperation, both among States and among international organizations, regional organizations and the United Nations system. Such coordinated international cooperation to combat the threat of terrorism should be consistent with the principles of the Charter of the United Nations, the human rights instruments, international law and the relevant international conventions. The actions of a single State or a limited number of States could not win the war against terrorism; all States must refrain from providing any form of assistance or safe haven to the perpetrators and instigators of acts of terrorism.

27. The international community must define terrorism properly and must not link it with legitimate resistance to foreign occupation. In that regard, he stressed the Syrian, Lebanese and Palestinian peoples' right under international law to combat foreign occupation and called on Israel, as the occupying Power, to cease its unethical and illegitimate war against the Palestinian

people. He rejected the conflation of Islam and terrorism by both Muslims and non-Muslims; intolerance, extremism and violence had no place in Islam. His delegation therefore called on the Commission to speak out against those who promoted hatred against Islam and Muslims.

28. Mindful of the importance of combating the causes of terrorism and extremism, the Kingdom of Bahrain had embarked on a political and economic programme designed to promote human rights and fundamental freedoms and to combat extremism. It was preparing to become a democratic constitutional monarchy in accordance with the National Action Charter adopted by referendum on 14 February 2001. His delegation assured the Commission that it would spare no effort to strengthen international cooperation against terrorism while respecting human rights and fundamental freedoms.

29. Mr. SALINAS (Chile) said that since the establishment of the national Truth and Reconciliation Commission, Chilean society had made a great effort to develop measures and programmes to provide the victims of human rights violations and their families with adequate compensation. The Chilean Government's goal had been not only to compensate the families and victims, but also to restore the dignity of those whose fundamental rights had been assailed by giving them public recognition that could help them to overcome the psychological and physical effects of the violence they had sustained. With the help of friendly countries, NGOs, jurists and experts, Chile had endeavoured to develop a set of principles and guidelines for compensating the victims of human rights violations in three areas: restitution, compensation and reintegration. It would therefore sponsor a draft resolution designed to complete the consultation process on the basic principles and guidelines developed by Mr. van Boven and Mr. Bassiouni. That set of principles would doubtless make a significant contribution to international human rights law.

30. Mr. SHEN Yongxiang (China) said that the realization of civil and political rights, which were an integral part of human rights, was an evolving process. Only by combining the principle of the universality of human rights with specific national conditions would it be possible for each country to promote those rights effectively. No country should impose its own model on others.

31. China had made tremendous efforts to promote and protect civil and political rights, first by adopting many laws to build democracy and the legal system and, second, by taking various measures to strengthen judicial supervision, upgrade law enforcement personnel and ensure fairness in the administration of justice. In 2001, 4,342 judicial officials had been convicted of bribery and misconduct. Before assuming their duties, such officials must now pass a strict nationwide judicial examination. Third, freedom of expression was guaranteed by the Chinese Constitution. The Government encouraged the people to express their opinions and welcomed media monitoring. It had set up offices to receive and handle complaints and criticism. Fourth, respect for and protection of freedom of religion were enshrined in the Chinese Constitution. The State protected the religious activities of over 100 million believers; however, some Western figures had accused the Chinese Government of "religious persecution" because it had combated, according to law, illegal and criminal activities that seriously harmed public interests. Fifth, Chinese law prohibited and punished acts of torture, which were defined as criminal acts. Cases of torture, though isolated, were never tolerated by the Chinese Government and were always treated seriously. As a State party to the United Nations Convention against Torture, China had

consistently fulfilled its obligations and had submitted its reports in a timely manner. At the invitation of his Government, the Working Group on Arbitrary Detention had visited many Chinese prisons and had praised the fair treatment of inmates. In December 2001, his Government had invited the Working Group on Arbitrary Detention and the Special Rapporteur on torture to visit China. Allegations by certain Western Powers that torture was routinely practised in Chinese prisons were sheer fabrication; in all countries, there were both successes and failures in the promotion and protection of human rights. The Chinese Government was open to cooperation with all countries on the basis of equality and mutual respect in order to advance the cause of human rights throughout the world.

32. Mr. MVONDO AYOLO (Cameroon) described the measures that his Government had taken after the visit of the Special Rapporteur on torture. In Cameroon, an internal police body had been established in order to punish police officers and army officers who committed human rights violations, including acts of torture. Discipline had been strengthened in the prisons and, in cooperation with the National Committee for Human Rights and Freedoms, an inspection of the detention centres had been carried out. The European Union had already offered to fund the work of a group of volunteer lawyers and judges in order to reduce overcrowding in the prisons as a result of the large number of people held in pre-trial detention.

33. A comprehensive humanization programme for the jails was being developed. Jails had been brought into line with international standards in, inter alia, Douala, and there were plans to build new ones in Yaoundé and other major cities. The programme would also improve conditions of detention, particularly in the areas of food and health care. The prison administration was required to ensure that detainees were well treated; to that end, events known as "detainees' weeks" were held in the prisons. The programme for the improvement of conditions of detention was part of cooperation with France established in 1999; it also required support from the international community. Lastly, the subregional centre for human rights in Yaoundé, in focusing on human rights education and training, was certain to have a positive influence on law enforcement personnel and prison officers.

34. His Government was convinced that major reforms were needed in the field of education in order to ensure respect for national and international standards in that area and, in particular, to eliminate the practice of torture and to ensure that public officials who committed torture did not go unpunished.

35. The question of extrajudicial and summary executions had been mentioned by the Special Rapporteur; his delegation emphasized that the Government had never endorsed such practices. All those who committed such offences were brought to trial. However, the country was currently faced with a tremendous security problem in the cities (Douala and Yaoundé) owing, inter alia, to organized crime linked to illegal weapons trafficking. The problem was a source of concern to all the countries of the Central African subregion, where borders were easily penetrated and no definitive solution had as yet been found to the problem of resettling refugees, who in many cases closely resembled militias. Special units had been created to address that situation; their purpose was certainly not to torture or execute people, but when faced with the agents of organized crime they had to defend themselves. The result was loss of human life on the part of both the security forces and the criminals.

36. Mr. TIBARUHA (Uganda), noting that Uganda was a party to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, cited the provisions of the Ugandan Constitution prohibiting all forms of torture and guaranteeing the independence of the Ugandan Human Rights Commission in the performance of its monitoring duties. The Commission was empowered to hear complaints of torture and to order any State body under whose aegis torture was committed to pay compensation. It was also mandated to visit prisons in order to ascertain whether the human rights of inmates were being violated. In that connection, Uganda supported the eventual adoption of an optional protocol to the Convention against Torture.

37. The Constitution provided that anyone arrested or detained must be informed immediately of the reasons for his arrest and of his right to see his lawyer and next of kin and to be brought before a judge not less than 48 hours from the time of arrest or detention. Under all circumstances, including a state of emergency, the right to a writ of habeas corpus and to a fair hearing was inviolable.

38. The provisions of the Constitution relating to detention could be waived only during a state of emergency and if ordered by Parliament. In any event, cases of detention were subject to review by the Ugandan Human Rights Commission not more than 21 days after the commencement of detention and, thereafter, at 30-day intervals. The Commission could order the detainee's release or uphold the grounds for the detention. Furthermore, the Minister responsible must make monthly reports to Parliament on the number of persons detained under the state of emergency and on the action taken in compliance with the findings of the Ugandan Human Rights Commission, and the names of the persons detained and the legal grounds for the detention must be published in the official gazette. Thus, the Ugandan Constitution guaranteed protection of the civil and political rights of all persons in Uganda without discrimination of any kind.

39. Mr. SOUALEM (Algeria) said that the wave of solidarity and international mobilization in the wake of the events of 11 September 2001 were proof of the emergence of a collective, consensual approach to the danger of transnational terrorism, which denied the values on which the Commission's annual sessions focused. If States' commitment to that path was further strengthened, the development of such a trend could promote the triumph of the ideals of liberty, justice and progress throughout the world.

40. Democracy, to which all countries aspired, was a long-term goal influenced by various factors, but it must never be experienced by peoples as an asset that only the most powerful could possess. In other words, democracy must not be perceived as a new form of violence or threat to the "have nots" by the "haves". The persistence of many forms of injustice and of poverty throughout the world should encourage the development of international cooperation on all human rights issues. It was clear that the marginalization of developing countries' economies remained the primary source of instability and insecurity and the primary cause of political crises, trafficking, corruption and organized crime and of the environmental damage which threatened the survival of entire peoples. The debt burden remained a major obstacle to development and addressing that problem should be a major focus of international solidarity.

Lastly, as the globalization process began, discussion of human rights must not take precedence over the fundamental question of sustainable development; greater focus on that issue could only help to end exclusion and marginalization.

41. Mr. SOLARI (Argentina), speaking on behalf of the Southern Common Market and the associated States, Bolivia and Chile, said that democracy was the most satisfactory, and perhaps the only, system under which individuals could fully exercise their rights.

42. On 24 July 1998, the Southern Common Market (MERCOSUR) and its associated States had adopted the Ushuaia Protocol, part of the Treaty of Asunción, which institutionalized the protection of the democratic system in the region. The Protocol established a system of consultation in the event of a breakdown in democracy in any of the six countries members and called for the possibility of suspending the right of the State party in question to participate in the various MERCOSUR bodies and even of revoking its membership in the organization.

43. In accordance with the provisions of the American Charter of Human Rights, the States members of MERCOSUR, Bolivia and Chile considered the following to be essential components of representative democracy: respect for human rights and fundamental freedoms; access to and exercise of power in compliance with the law; the holding of periodic, free and fair elections on the basis of universal suffrage; a multiplicity of political parties and organizations; and separation and independence of powers.

44. Those countries were convinced that a democratic system needed to be monitored constantly, which presupposed a free press, an independent judiciary, anti-corruption measures and a civil society able to express itself and act freely.

45. In fact, some of those democratic States had themselves experienced political, economic and social problems. However, thanks to the maturity shown by their people and the solidarity shown by the other members of MERCOSUR, those crises had been resolved in a democratic fashion.

46. Mr. SOLARI (Argentina), speaking as the representative of his country, said that his delegation agreed fully with the statement made on agenda item 11 by the Chilean ambassador on behalf of GRULAC.

47. He welcomed the entry into force of the Rome Statute of the International Criminal Court, which marked a significant advance in the field of human rights. There was also a need for a binding international instrument to protect people against enforced or involuntary disappearances. He was therefore in favour of setting up an open-ended working group to draft such an international instrument. In that connection, he greatly appreciated the important report submitted by the independent expert Mr. Manfred Nowak (E/CN.4/2002/71) and fully agreed with its conclusions.

48. Mr. PEREZ SANCHEZ-CERRO (Peru) reaffirmed his Government's conviction that human rights were not only universal, indivisible and interdependent but also transcended borders and could not be considered as a purely internal matter for States. His Government had demonstrated the sincerity of that conviction by openly inviting rapporteurs and other

mandate-holders of the Commission on Human Rights to visit Peru. It had also normalized relations with the inter-American human rights system and had accepted the decisions of the Inter-American Commission on Human Rights in over 100 cases. Lastly, Peru had recently ratified the Inter-American Convention on Forced Disappearance of Persons and, like other GRULAC members, strongly supported the establishment of an intersessional working group to prepare a universally applicable draft convention on that subject.

49. Peruvian society had not been spared by terrorism, a phenomenon that the Peruvian State had combated without always taking into account its international human rights commitments. One of the main lessons that Peru had drawn from its confrontation with terrorism was that respect for human rights was no obstacle to putting an end to that scourge; on the contrary, such respect could only strengthen the position of the State and society in the face of acts that could never be justified. To rectify, insofar as that was possible, the mistakes made in the past by the State in combating terrorism, his Government had set up a special fund to handle illicit gains, which would be used to finance the work of the Truth and Reconciliation Commission and to pay compensation to the victims of human rights violations. In taking those measures, his Government was merely returning to one of the basic principles of its foreign policy, namely, the faithful implementation of the international treaties to which it was a party. In the same spirit, it supported the important work carried out within the Commission on Human Rights, particularly that done by the open-ended working group on a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In that regard, he invited States to show flexibility so that the protocol could be adopted without delay.

50. Given the numerous tasks still to be accomplished if Peru was to offer each of its citizens a life of dignity, it was more than ever necessary to establish an alliance between the Peruvian Government, civil society and the international organizations. In that regard, he welcomed the contribution by NGOs and international human rights mechanisms. The Peruvian people were well aware of NGOs' tireless efforts to give effect to the altruistic ideal enshrined in the Universal Declaration of Human Rights.

51. Mr. HARAGUCHI (Japan) drew attention to the close links between the consolidation of democracy, in which individuals participated in government and development, and the protection of human rights. Freedom of expression was very important in that respect, especially in modern societies, where new information technologies should enable everyone to receive information from all over the world and thus be better placed to play a role. However, the circulation of information could also be dangerous, as it might transmit messages, on racial hatred or child pornography for example, which could be very harmful for society. Those problems must therefore be tackled with care not to impose unlawful and unnecessary restrictions on freedom of expression.

52. His Government was deeply concerned about the serious human rights violation that enforced or involuntary disappearances represented. Notwithstanding the regrettable decision of the Working Group on Enforced or Involuntary Disappearances with regard to the cases of disappearance of Japanese nationals, he drew the attention of all States to the cases in question and requested them, in accordance with Commission on Human Rights resolution 2001/46, of 23 April 2001, to cooperate with United Nations bodies in the search for a solution.

53. Mr. KASRI (Indonesia) said that in the past year his Government had concentrated its efforts on promoting dialogue and reconciliation, with the active participation of the people of Indonesia. As a result of its efforts, peace plans had been drawn up for the Moluccas and Central Sulawesi. The Government had also taken steps to put an end to impunity, which was largely a legacy of previous Governments. An ad hoc court had been set up to try flagrant human rights violations committed in East Timor. Similar courts had also been set up in the main towns in the country and the President of Indonesia, Ms. Megawati Soekarnoputri, had just signed two laws to protect witnesses in the trials and to compensate and rehabilitate the victims of abuse. There was still a good deal of work to be done if the Indonesian judicial system was to rival those of established democracies. However, the system was under review in order to ensure, in particular, the independence of judges. In that regard, the forthcoming visit by Mr. Cumaraswamy, the Special Rapporteur on the independence of judges and lawyers, would undoubtedly be beneficial.

54. In Indonesia, torture was defined as a crime against humanity under domestic law. Anyone suspected of using force to obtain a confession was liable to prosecution. Moreover, the repeal of the controversial law on subversion, the review of the law on criminal procedure and the drafting of the new law on the Penal Code, which would contain provisions on torture, would also help improve matters in that area. In addition, human rights observers and representatives of the International Committee of the Red Cross regularly visited Indonesian prisons.

55. With regard to freedom of expression, the Government was pursuing the reforms begun in 1999 to guarantee freedom of the media and to facilitate access to information, particularly to online media. In addition, an invitation had been extended at the end of the year to Mr. Abid Hussein, Special Rapporteur on the right to freedom of opinion and expression, to visit Indonesia.

56. In her report (E/CN.4/2002/74), the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, denounced the excessive use of force by the Indonesian police during demonstrations. Although those demonstrations were actually far from "peaceful", the current policy of the police was to negotiate with demonstrators before resorting to force. Furthermore, members of the security forces throughout Indonesia had to follow an intensive training course familiarizing them with human rights principles. Lastly, the recently-adopted bill on the national police placed the police under the jurisdiction of civil courts, rather than military courts.

57. The religious conflicts that had pitted Muslim and Christian communities against each other in the Moluccas and Central Sulawesi could be considered a thing of the past. Following the signing of two peace agreements in Malino, life had returned to normal in the two regions, so that the two-year state of emergency should soon be lifted.

58. Although Indonesia was still a country in transition and would need time to stabilize the political situation after the crises it had been through, the political will was there and developments in the situation justified a cautious optimism.

59. Mr. KPOTSRA (Togo) said that a free and independent press was a key part of democracy. There were 15 or so newspapers in Togo, two thirds of which represented the different opposition movements. At the same time, private, commercial or religious Togolese or foreign radio stations and private television channels were growing in number as a consequence of article 26 of the Constitution of the fourth Togolese Republic, which enshrined freedom of the press and stipulated in particular that the press did not require prior authorization, did not have to provide sureties, was not subject to censorship or other hindrances and could be banned only by a decision of the courts. Freedom of the press was thus exercised within the limits laid down by law. The international media had recently reported that journalists working for the private Togolese press had been arrested. Those arrests, most of which had followed complaints by individuals, had been for broadcasting untrue stories or information, defamation, attacks on honour and dignity or forgery - in any case, for ordinary law offences that were punishable as such.

60. Ms. CEK (Croatia), speaking on the question of terrorism, which had become a priority for the entire United Nations system after the tragic events of 11 September, said that the Commission on Human Rights was the appropriate forum in which to consider ways to combat that phenomenon while respecting human rights and fundamental freedoms.

61. Notwithstanding the United Nations Convention against Torture, instances of that practice were still widespread. It was therefore vital to establish credible preventive mechanisms. The draft optional protocol to the Convention prepared by the Working Group was satisfactory insofar as it provided not only an international mechanism for carrying out visits to places of detention but also national mechanisms to ensure that monitoring was ongoing. She called on the members of the Commission to support the Chairperson's proposal on the optional protocol.

62. Conscientious objection to military service was a legitimate right of every person. Under Croatian legislation, anyone who, for religious or moral reasons, did not wish to serve in the armed forces could opt for alternative military service. Moreover, a bill was being prepared to introduce that right into the Constitution. The drafters of the bill were guided by Commission on Human Rights resolution 1998/77. In that respect, she was pleased that the Office of the United Nations High Commissioner for Human Rights had set itself the objective of preparing a compilation of best practice in that area.

63. Mr. AHMAD FAIRUZ (Malaysia) said that Malaysian society was a multiracial one within which tolerance had long guaranteed peace and harmony. Although Islam was the official State religion, freedom of religion was guaranteed by the Constitution. The Constitution also established a clear separation between the legislative, executive and judicial powers, with a completely independent judiciary. Judges had always been appointed by the King on the advice of the Prime Minister and after consultations with the Conference of Rulers and the Chief Justice; they enjoyed security of tenure and exemption from criminal and civil liability in the exercise of their duties. The claims by the Special Rapporteur on the independence of judges and lawyers in his last two reports that the Malaysian judicial system was not completely independent were therefore incorrect. As proof, the Federal Court had allowed the appeal of Zainur Zakaria, one of the lawyers working for former Deputy Prime Minister Anwar Ibrahim, and had quashed the lawyer's sentence for contempt of court because of a procedural flaw.

64. Mr. GUEYE (Senegal) thanked the Chairperson-Rapporteur of the Working Group on the Draft Optional Protocol to the Convention against Torture for his high-quality report and tireless efforts over many years. His delegation supported the adoption of the draft protocol by co-sponsoring every year the resolution submitted for that purpose and was convinced that such an instrument would facilitate compliance with the duty incumbent upon States parties to the Convention to take steps to prevent the use of that inhuman practice. Since ratifying the Convention in 1986, his Government had endeavoured to put into practice all its commitments under that instrument, including by setting up a working group to review domestic law to bring it into line with the Convention. The new Senegalese Constitution, adopted by referendum in 2001, clearly stipulated that the human person was sacred and inviolable and the Penal Code contained provisions intended to prevent acts of torture or, where necessary, to punish severely those who committed them. Thus, all offences against the person were punishable under criminal law when accompanied by acts of torture, whether the guilty person was a private individual or a public official. Moreover, public officials who detained an individual outside the places provided for that purpose was liable to be deprived of their civil rights and Senegalese law gave the victims of abuse by officers of the judicial police the possibility of taking their case directly to the indictment division of the Court of Appeal. An important step had been taken in 2000 with the introduction of sentencing standards, which provided for the creation of the position of judge responsible for the execution of sentences, the tailoring of individual sentences and the intervention of representatives of civil society in cases of detention, under well-defined conditions. The Government had also established a Human Rights Office, to which all individuals and legal persons had access, and the position of Human Rights Commissioner.

65. In a similar vein, Senegal had ratified the Rome Statute of the International Criminal Court less than eight months after signing it. The ratification of the Statute involved taking legislative, administrative and other measures to ensure the applicability of the basic principle of complementarity between the International Criminal Court and the domestic courts. The full implementation of the provisions of the Statute therefore required States parties to implement domestic legislation that conformed to universally recognized norms and those of jus cogens, which Senegal was determined to do.

66. Mr. Jakubowski (Poland), resumed the Chair.

67. Ms. DINH THI MINH HUYEN (Viet Nam) said that in 1986 her Government had adopted its "Doi Moi" (renewal) policy, under which, among other things, the country's legislation had been updated. In adopting new laws, the Vietnamese National Assembly had basically endeavoured to incorporate into domestic law the international instruments to which Viet Nam was a party. The Government's objectives for the next five years were to strengthen the rule of law, reform the three branches of power and promote democracy. Efforts would be made to enhance the power of the National Assembly as the body overseeing the entire range of State activities, particularly in areas such as the utilization of public finance and action to combat corruption and red tape. The administration would be gradually modernized while the emphasis would be on decentralization and the delegation of powers to local government.

68. Although there was no single model of democracy, a fundamental characteristic of all democracies was the full participation of the population in all aspects of life in the country. Viet Nam had made remarkable progress in that respect since beginning the process of renewal.

Democratic institutions had been strengthened, as had the legal system, which had helped enhance the enjoyment of civil and political rights and economic, social and cultural rights. A government decree issued in 1999 stipulated that everyone should henceforth be involved in the consideration of important issues in State affairs. In March 2002, a meeting had been held to review the implementation of the decree. That democratic development had also helped improve the country's economic situation. Thus, during the past decade, poverty had been reduced by half in Viet Nam, which had enjoyed an average growth rate of 7 per cent over the same period, thereby confirming the close relationship between democracy and greater well-being.

69. Mr. MWILANYA WILONDJA (Democratic Republic of the Congo) said that torture and other cruel, inhuman or degrading treatment or punishment should be prohibited outright not only in countries where there was a struggle for power - where the authorities should not use such practices against opposition political or social forces - but also in countries where racist sentiment often led to degrading treatment of immigrants, in particular when they were being escorted to the border. The Democratic Republic of the Congo had acceded to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and several related regional conventions and had given a firm undertaking at a national conference in 2001 to combat torture at all levels of the law-enforcement agencies. To that end, the Government had set up a human rights department in the national police force and the department issued regular information sheets for staff. It had also set up an inter-agency human rights committee consisting of representatives of the Ministry of Human Rights, the Ministry of Justice and the ministries responsible for the special police and security services, whose task was to monitor detention and ensure respect for the rules of procedure and human dignity at all levels of pre-trial investigations.

70. Nevertheless, as pointed out by the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, the situation in the territories under the control of the occupying forces in the east of the country was dramatic. In Goma, there was even a punishment cell with a well-known reputation for torture. Amnesty International had reported that the rape of young girls and women of all ages was in widespread use as a weapon in the war being waged by armed opposition groups and foreign government troops and that the rapes themselves were often accompanied by acts of torture. Those facts had been confirmed by the Special Rapporteur, according to whom such practices and the ensuing spread of sexually transmitted diseases were used as a weapon of war. It was therefore a question of war crimes, which must be condemned by the Commission. According to the jurisprudence of the International Criminal Tribunals for the former Yugoslavia and Rwanda, the systematic rape of women in a given population could constitute genocide. He appealed once more to the Commission to support the proposal to set up an international tribunal for the Democratic Republic of the Congo.

71. Mr. SABHARWAL (India) said that terrorism was one of the most serious threats to human rights. Article 30 of the Universal Declaration of Human Rights prohibited not only States but also any group or person from engaging in any activity aimed at the destruction of the rights and freedoms set forth in the Declaration. Terrorist acts constituted a violation of all fundamental rights, beginning with the very first: the right to life. The Declaration on Measures to Eliminate International Terrorism stated that terrorist acts could not be justified under any circumstances. Democracies were particularly vulnerable to terrorists, who took advantage of the freedom, including the freedom of speech, that they guaranteed. The terrorist attacks on the

legislative assembly of the State of Jammu and Kashmir and against the Indian Parliament were a classic example of the grave threat posed by terrorism to democracy. It was no coincidence that the perpetrators of those attacks came from Pakistan, where successive military dictatorships had always nourished territorial ambitions over Jammu and Kashmir and justified the terrorist attacks on India. Although Pakistan had recently dissociated itself from the Taliban regime under international pressure, it continued to portray terrorists as freedom fighters and it was no surprise that many of them had taken refuge in that country.

72. There was an urgent need to recognize that human rights violations were not the exclusive province of States and that terrorism did indeed involve human rights violations. It was to be hoped that the shock of the events of 11 September would persuade a number of Governments to review their position on the use of violence against innocent civilians, for which there could never be any justification, either political or ideological. That view had been upheld in the Indo-European Union Declaration against International Terrorism and in the New Delhi Declaration. The Commission on Human Rights should also send out a strong signal that the international community would no longer tolerate the activities of terrorists and the States that protected them. An early conclusion to the negotiations on a comprehensive convention on international terrorism would also be welcome.

73. After the attacks on it in 2001, India was absolutely determined to combat cross-border terrorism and was grateful for the international support it was receiving in that respect. Certainly, India's endeavours were not solely in its own national interest, but also fitted in with a worldwide campaign. Lastly, it was important to remember that terrorists had no religion, believing only in violence, so that any attempt to link a terrorist act and a particular religion should be condemned.

74. Ms. ACOSTA (Mexico) said that her country had set itself the objective of eliminating deeply-rooted practices that had held back its development on all fronts. In the belief that democracy and human rights involved a new exercise of sovereignty, including a reorientation of its foreign policy, the current Mexican Government had adopted a human rights programme covering the following points: active participation in international forums; harmonization of domestic law with international standards and practices; cooperation with the Office of the United Nations High Commissioner for Human Rights and with the Commission's mechanisms; and, lastly, the opening of forums for dialogue in order to facilitate the participation of civil society in policy-making in the country. The Government was therefore establishing new relationships with all actors in society and the dialogue with civil-society organizations had become institutionalized.

75. With regard to the two initiatives being considered under agenda item 11, namely, the preparation of a draft binding instrument for the protection of persons from enforced disappearances and the adoption of an optional protocol to the Convention against Torture, she acknowledged that Mexican society unfortunately had experience of both kinds of crime and was determined to eradicate them. The President had recently appointed a special prosecutor to investigate disappearances in Mexico in the 1970s and 1980s and to prosecute the perpetrators. Although Mexico had ratified the Inter-American Convention on Forced Disappearance of Persons, it believed, like many other countries, that a universal instrument such as the one provided for in the draft resolution to be submitted for the consideration of the Commission was

absolutely essential. With regard to the second initiative, she welcomed the successful completion of the work of the Working Group on the Draft Optional Protocol to the Convention against Torture. Lastly, she welcomed the imminent entry into force of the Rome Statute of the International Criminal Court.

76. Mr. VIEIRA (Brazil) said that, despite the progress made since the adoption of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, blatant violations of those rights continued to occur around the world and a wide gap continued to exist between theory and practice. A determining factor in the effective enjoyment of human rights was the acceptance by States of international monitoring. For that reason, his Government was in favour of enhancing the dialogue between States and the monitoring bodies set up by international institutions. Thus, Brazil had received six visits from special rapporteurs and had decided to extend an open invitation to all rapporteurs. On the domestic front, in terms of prevention, the National Council for the Protection of the Rights of the Person, established in 1964, had become the main human rights monitoring body in all States of the Federation. The Council sent fact-finding committees to shed light on reported violations. A national campaign against torture had also been successfully launched and seminars were to be organized for judges to make them aware of the need to bring torturers to justice and punish them. Lastly, his delegation would be submitting to the Commission a draft resolution affirming the incompatibility of democracy and racism.

77. Mr. HENRIKSEN (Observer for Norway) said that the rule of law was a precondition for the exercise of human rights and fundamental freedoms and for the protection of every person. In that connection, he wished to thank the special rapporteurs for their extremely useful work and called on all States to respond positively to their requests.

78. Torture could never be justified. Norway stressed the need to ensure the effective implementation of international standards on protection against torture and other cruel, inhuman or degrading treatment or punishment and to strengthen the international system for the prevention of torture. He therefore supported the draft optional protocol to the Convention against Torture.

79. Freedom of expression and opinion, including freedom of the press and media, was a basic prerequisite for democracy. He stressed the need for women to take part in political and civil life at all levels, as the participation of women was the sign of a truly democratic and well-functioning society.

80. Mr. MENON (Observer for Singapore) said that one of the reasons his Government had introduced military conscription was to give members of the different national communities a keener sense of national identity. National service was perfectly suited to the circumstances and realities in Singapore. He criticized the draft resolution on conscientious objection submitted by, among others, the delegation of Croatia. In his opinion, the sponsors were trying to impose their own beliefs on everyone else, to the detriment of States' freedom of choice. They ignored the fact that national defence was a fundamental sovereign right under international law and that it was outside the framework provided by international human rights instruments. In conclusion, he said that the Commission should not become a forum for some States to try to impose their value systems on others.

81. Ms. PICTET-ALTHANN (Observer for Malta) said that the draft resolution on religious freedom deserved the support of the Commission. She drew attention to the situation in the occupied Palestinian territories, noting that on 14 March 2002 the Holy Family Hospital, which was run by the Order of Malta in Bethlehem, had been shelled and come under heavy machine-gun fire. The functioning of that maternity hospital, which treated 14,000 people a year, was still severely limited. She pointed out that the attacks were a flagrant violation of the fourth Geneva Convention and expressed concern at the escalation of violence in the Holy Land, which primarily affected the civilian population. She called for an urgent solution to the conflict: nothing short of a return to the negotiating table followed by the establishment of a just and lasting peace bore thinking about.

82. Mr. COUTAU (International Committee of the Red Cross (ICRC)), referring to a fundamental aspect of humanitarian law, namely, the right of families to know the fate of family members about whom they had received no information owing to a situation of armed conflict or internal violence, said that the lack of news about a loved one was a tragic reality that could harm the process of reconciliation and the establishment of a lasting peace. ICRC therefore aimed to prevent disappearances, restore family ties and find out what had happened to persons whose families had no news of them. Often, however, it was not able to carry out its mandate because of a lack of political will on the part of the authorities or parties concerned.

83. ICRC had decided to undertake an in-depth study on that issue. Initially, workshops on the problem of disappearances would be organized for governmental and/or non-governmental experts. Between May and September 2002, they should produce recommendations and define best practices to be followed in that area. Subsequently, ICRC would hold an international conference from 19 to 21 February 2003, at which the results of the work done in the first phase would be presented. ICRC hoped that the outcome of the conference would be of practical use to the political actors and humanitarian workers on the ground and was determined to pursue and develop its activities aimed at putting a stop to disappearances and ensuring that families' right to know, which was recognized by the entire international community, was respected.

84. Mr. TAWFIQ (Observer for Iraq) said that his country had ratified the International Covenant on Civil and Political Rights in 1970 and had enacted several laws to ensure effective enjoyment of those rights. Under the 1974 law on autonomy for Iraqi Kurds the Kurds had been allowed to set up their own institutions. The right to set up political parties, trade unions and associations was recognized by law in Iraq, as was the right freely to express an opinion and practise a religion. The people were regularly consulted by referendum and could make themselves heard at the municipal level.

85. Unfortunately, certain countries denied others the right to manage their own internal affairs as they wished. For example, the United States and the United Kingdom had for four years imposed an iniquitous embargo on Iraq, carried out daily attacks on the country without a mandate from the Security Council and provided covert assistance to the opposition parties in Iraq. The United States had recently stepped up its aggression against Iraq, and he called on all countries to ensure observance of the Charter of the United Nations with respect to non-aggression and non-interference in the internal affairs of States.

86. Mr. AL-BADER (Observer for Kuwait) said that, at its previous session, the Commission on Human Rights had rightly highlighted the question of terrorism. In its resolution 37/2001, the Commission had recalled that the most essential and basic human right was the right to life. Kuwait had been one of the first countries to suffer from terrorism and welcomed the cooperation of the friendly countries that had helped it with the task of reconstruction. The lesson learned in the past had not been forgotten. His Government firmly condemned all acts of terrorism, whoever the perpetrators, and demanded that the latter, as well as those who funded their activities, should not be allowed to go unpunished. However, terrorism should not be confused with resistance and Islam should not be associated with the scourge of terrorism, as Islam had always been a religion of peace, fraternity and tolerance.

The meeting rose at 6 p.m.